

RESPONSE TO LSC'S REQUEST FOR COMMENTS ON SUGGESTED LEP GUIDANCE FOR LSC RECIPIENTS

**SUBMITTED BY
THE CENTER FOR LAW & SOCIAL POLICY
ON BEHALF OF
THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION**

MARCH 5, 2003

On January 9, 2003, LSC published in the *Federal Register* (68 FR 1210-1212) and on its own website (<http://www.lsc.gov/FOIA/other/lep-rfc.pdf>) a request for public comments regarding the issue of whether, and in what form, LSC should issue guidance to its recipients on their obligations to provide services to persons with limited English proficiency (LEP). These comments are submitted to LSC in response to that request on behalf of the National Legal Aid and Defender Association (NLADA) by the Center for Law & Social Policy (CLASP). NLADA is a membership organization that represents civil legal services programs including those funded by LSC. In addition, NLADA members include many other legal services providers with substantial experience and expertise serving clients with limited English ability and communities with large numbers of LEP clients. CLASP serves as NLADA's counsel.

Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal assistance from discriminating on the basis of national origin. The Department of Justice (DOJ), acting under the terms of Executive Order 13166, recently issued guidance to its recipients regarding actions they should take to address national origin discrimination affecting LEP persons in the provision of services. Such actions include, among others, provision of interpretation and translation services. The DOJ guidance applies to DOJ recipients and is intended to serve as a model for other federal agencies that are required to adopt their own LEP guidance for their recipients under the Executive Order.

LSC is not a federal agency and is not subject to the Executive Order, so LSC is not required to issue its own guidance, but may do so as a matter of policy. Although NLADA believes strongly that LSC recipients should take actions to ensure that they provide meaningful services to LEP persons, we question whether LSC programs are subject to the specific requirements of Title VI because it is not clear that LSC funds are, in fact, "Federal financial assistance."

We have significant concerns that if LSC funds are considered to constitute "federal financial assistance" for purposes of Title VI it would set a precedent that might result in severe unintended consequences. For example, it could result in other federal requirements being imposed on LSC recipients, and

it might limit the circumstances under which LSC funds could be used as the non-federal match for other federal or state funds.

Nevertheless, as noted above, NLADA strongly believes that all of its members, including LSC recipients, should provide services to LEP clients in a non-discriminatory manner. This is especially important as more LSC recipients begin to bring cases against other agencies for their failure to abide by the requirements of Title VI with regard to LEP persons. We consider it to be both, as a matter of policy, prudent and, as a matter of principle, essential for all LSC recipients to abide by the rules that they demand others to follow. In addition, we agree that the LSC grant assurances clearly obligate recipients to provide services in a manner that does not discriminate on the basis of national origin. Finally, many LSC recipients are already subject to Title VI because they receive other funds from federal agencies, such as grants from the DOJ under the Violence Against Women Act (VAWA) or other agencies including Department of Housing and Urban Development and the Internal Revenue Service.

Assuming that LSC recipients are obligated, under either Title VI or the LSC grant assurances, to provide services to LEP persons in a non-discriminatory manner, the notice suggests several approaches that LSC could take to ensure that recipients meet those obligations, and LSC seeks comments on what is the most appropriate and most helpful approach for LSC to take. LSC suggests several different options, each of which has pros and cons. NLADA would like to share the following comments on the various approaches suggested by LSC.

First, LSC suggests that it could issue its own Title VI (LEP) regulations, similar to Part 1624 of the LSC regulations that were issued in 1979 to implement Section 504 of the Rehabilitation Act of 1973. LSC was not obligated to issue Part 1624, but chose to do so because it believed that LSC should help ensure that its recipients provided services to clients and conducted their employment practices without regard to disability. NLADA does not support the idea of LSC issuing a regulation to implement Title VI/LEP. First, such a regulation would impose additional new regulatory burdens on recipients, burdens that might be inconsistent with requirements imposed by other grantor agencies. Second, it would give LSC the obligation to monitor and enforce compliance with the regulation. LSC acknowledges that its staff does not have the expertise necessary to enforce civil rights laws, and lacks the authority to take any appropriate action in the event that it found a violation of the regulation. NLADA urges LSC not to adopt a new regulation to address Title VI/LEP issues.

Second, LSC suggests that it could issue its own non-regulatory guidance for recipients, modeled on the DOJ guidance, but adapted to address the specific parameters of the legal services program. Such guidance would be non-binding, but could provide recipients with helpful information about the standards that should be applied in determining when translation and interpretation services

should be provided and examples of the situations where LEP services should be made available and what kinds of services are appropriate. However, because we believe that this is an area which requires substantial expertise in order to appropriately address the issues and we question whether LSC staff has the suitable expertise to do so, we have some hesitancy about LSC issuing its own guidance in this area.

Nevertheless, if LSC developed its own guidance after substantial consultation and collaboration with those recipients that have significant experience working with LEP populations and with representatives of the civil rights community who have expertise in LEP issues, NLADA believes that such LSC tailored guidance could be very helpful to recipients. Such guidance should be modeled on the DOJ Guidance and should incorporate the DOJ standards for when LEP services are appropriate. LSC would have to make sure that its guidance is consistent with the DOJ guidance in order to ensure that recipients that also receive DOJ or other federal funds are not subject to conflicting guidance. However, the DOJ Guidance was written primarily with law enforcement agencies in mind and includes many examples that are not relevant to legal services programs. It would be important for LSC to substitute examples from LSC practice in order to ensure that the guidance is helpful and relevant. In addition, the DOJ guidance is very detailed and should be streamlined to make the guidance easier for LSC recipients to understand and to use.

Third, LSC suggested that it could refrain from issuing its own guidance, but commend the DOJ guidance to LSC recipients, while making it clear that the DOJ guidance is not directly applicable to LSC recipients and that some of the guidance may not be appropriate for legal services providers. Many LSC recipients that receive other federal funds from DOJ or other agencies that have adopted LEP guidance modeled on the DOJ guidance are already subject to this guidance. For the others, this approach would serve to remind them of their duties under the LSC grant assurances and provide them with some useful direction in meeting their obligations to LEP clients. As noted above, the DOJ guidance is tailored to a different grantee population. However, we believe that it would still provide helpful information to legal services programs.

Fourth, LSC suggested that it would be justified in taking no action at all with regard to Title VI/LEP, since the Executive Order does not apply to LSC and it has no direct responsibility to enforce Title VI. However, since the client population served by LSC recipients is increasingly comprised of significant numbers of LEP persons, NLADA believes that it is important for LSC to give some direction to its LSC recipients that describes their obligation to effectively serve their LEP clients, and we urge LSC to take some action to provide guidance to LSC recipients with regard to these issues.

Fifth, LSC suggested that, in addition to or in lieu of the previous options, LSC could collect and disseminate to its recipients information on ideas and “best

practices” from those legal aid and other programs that are already effectively providing services to LEP persons. NLADA believes that this is an important and appropriate role for LSC and would strongly encourage LSC staff to take steps to set up a clearinghouse for LEP information, either as a new section of the online LSC Resource Library or as a separate effort. LSC should work with the National LEP Advocacy Task Force and other groups with expertise in this area to collect and disseminate as much useful information as possible, and develop a method to disseminate the information widely within the LSC recipient community.

We have attached a copy of a document that was developed by the Language Access Project of Community Legal Services in Philadelphia, a former LSC recipient, that describes an approach to “Making a Legal Services Program Accessible to Clients With Limited English Proficiency.” This document is an excellent example of the kind of information that has been developed by members of the legal services community that should be made widely available to recipients using LSC resources in a clearinghouse capacity.

Finally, NLADA urges LSC to take steps to encourage all LSC recipients that have expertise in providing legal services to LEP clients to share information with LSC about their experiences and the techniques and approaches they have used that have been both efficient and effective in serving this segment of the client community. LSC should use its resources to disseminate this information and to provide its recipients with opportunities for training and technical assistance on when and how to provide appropriate services to the LEP community.

NLADA believes that LSC can and should play a helpful role in developing resources that will support and encourage recipients to provide appropriate assistance to clients with limited English proficiency without imposing any new regulatory burdens or requiring LSC staff to embark on compliance efforts for which they are not well-equipped. NLADA will encourage those of its members who have expertise in this area to use LSC as one vehicle to help share that expertise with their colleagues, many of whom may only recently have begun facing the problems associated with serving large numbers of non-English speaking clients.

We thank you for the opportunity to submit these comments and suggestions. If you have any questions please feel free to contact NLADA’s Counsel, Linda Perle at lperle@clasp.org or 202-906-8002.